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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 511

DR. M. S. DANTZLER, individually and as President of the South Carolina Naturopathic Physicians Association, *et al.*, *Appellants*,

v.

T. C. CALLISON, Attorney General of South Carolina.

Appeal from the Supreme Court of South Carolina

STATEMENT AS TO JURISDICTION

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OPINION BELOW

The opinion of the Supreme Court of South Carolina upholding the validity of the challenged state statute is reported at 94 S.E. 2d 177. A copy thereof is annexed hereto as Appendix A, *infra*, pp. 1a-11a.

JURISDICTION

(i) This was an action brought, by leave of court, within the original jurisdiction of the Supreme Court of South Carolina, seeking a declaratory judgment that the Act of the South Carolina General Assembly approved February 27, 1956, entitled "An Act To Repeal Sections 56-901

Through 56-919, Code Of Laws Of South Carolina, 1952, Relating To The Practice Of Naturopathy; To Make It Unlawful For Certain Persons To Practice Naturopathy In This State; And To Provide Penalties For Violating The Provisions of This Act" (*infra*, Appendix B, pp. 12a-13a), was unconstitutional in violation of, *inter alia*, the Due Process and Equal Protection clauses of the Fourteenth Amendment, and praying that the defendant be enjoined from enforcing it.

The proceeding was originally brought in the Supreme Court of South Carolina, which has jurisdiction of suits for injunction and original writs (S. C. Const., Art. 5, § 4; Code of Laws of S. C. 1952, § 15-121) and will exercise its original jurisdiction in the public interest. Rule 20(1), S. C. Sup. Ct. (set forth at 7 Code of Laws of S. C., 1952, p. 439). Jurisdiction to render declaratory judgments is conferred by Code of Laws of S. C., 1952, §§ 10-2001 to 10-2014. Pursuant to Code of Laws of S. C., 1952, § 10-2008, providing that the Attorney General shall be made a party when the constitutionality of a state statute is involved, the Attorney General of South Carolina was named sole defendant.

(ii) The opinion of the Supreme Court of South Carolina dismissing the complaint was filed on August 20, 1956. Under the South Carolina practice, there is no formal judgment additional to the opinion; see certificate of the Clerk of the Supreme Court of South Carolina (Appendix C, *infra*, p. 19a).[1] The notice of appeal was filed in the Supreme Court of South Carolina on August 24, 1956.

(iii) On March 13, 1956, the Supreme Court of South Carolina entered a restraining order enjoining enforcement of the challenged statute pending final decision. On August 28, 1956, all proceedings under the judgment of

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[1] *Accord*, recital in the order of Taylor, J., granting a stay pending appeal: "This"—referring to the opinion—"was a final judgment of the Supreme Court."

the South Carolina Supreme Court were stayed pending appeal by Justice Taylor of that court, and the March 13 restraining order was continued pending final determination of the present appeal by this Court.

(iv) The jurisdiction of this Court to review the judgment below by appeal is conferred by 28 U.S.C. § 1257(2).

(v) The text of the South Carolina statute, the validity of which was upheld below against a challenge of unconstitutionality under the Constitution of the United States, is set out in full in Appendix B at pp. 12a-13a, *infra*.

QUESTIONS PRESENTED

1. Whether in a state under whose law the right of an individual to practice the profession for which he has prepared himself is property of the very highest character, and under whose laws naturopathy has been recognized and regulated as a branch of the healing arts for thirty-six years, the legislature may, without any showing of harmfulness or abuses, flatly forbid the practice of naturopathy by anyone, regardless of his medical qualifications, consistently with the Due Process Clause of the Fourteenth Amendment.

2. Whether a state may, consistently with the Equal Protection Clause of the Fourteenth Amendment, flatly forbid the practice of naturopathy by anyone regardless of his medical qualifications, while at the same time forbidding naturopaths formerly licensed to qualify as doctors of medicine except on terms substantially more onerous than those required for persons originally seeking to become doctors of medicine.

STATEMENT

This was a proceeding within the original jurisdiction of the Supreme Court of South Carolina, seeking a declaratory judgment as to the validity and an injunction against the enforcement, of an Act of the General Assembly of

South Carolina approved February 27, 1956, entitled "
Act To Repeal Sections 56-901 Through 56-919, Code
Laws Of South Carolina, 1952, Relating To The Practice
Naturopathy; To Make It Unlawful For Certain Pers
To Practice Naturopathy In This State; And To Prov
Penalties For Violating The Provisions Of This A
(*infra*, Appendix B, pp. 12a-13a).

Plaintiffs below—appellants here and hereinafter
ferred to as such—are naturopathic physicians licensed
practice in South Carolina, suing for themselves and
others similarly situated. The defendant below—appel
here—is the Attorney General of the State.

The complaint alleges that the act in question violat
inter alia, the Fourteenth Amendment to the Constituti
of the United States (¶ 3) "in that it deprives the plainti
of their property and property rights without due proc
of law, and denies them of the equal protection of the la
and is arbitrary and discriminatory in that it singles
naturopathy, one of a number of special practitioners
the art of healing and abolishes their profession only."

The complaint alleges (¶ 5) that all of the naturopat
physicians in South Carolina entered the practice a
means of livelihood for themselves and to support th
families, that they have invested time and money in p
fecting themselves for the practice of their profession a
have spent large sums in the purchase of necessary equ
ment, and that naturopathy is defined in the South Caroli
statutes and has been legislatively recognized since 1920

Appellants, while recognizing the right of the legislatu
to regulate their profession, assert that the Act in questi
destroys it (¶ 6).

Appellee's answer (¶ 6) admitted "that the Act in qu
tion destroys the practice of Naturopathy as a separ
cult, branch or profession of the healing art," but aver
that the measure was none the less within the police pow
of the State.

Appellee further averred (¶ 7) "That the practice of medicine and of the healing arts can be lawfully prohibited by the State except upon the conditions imposed by it, which said conditions are subject to change from time to time to keep pace with the advance of educational and scientific progress." No facts setting forth why or in what respect the practice of naturopathy is contrary to scientific progress, or why or in what respect prohibition of practice of naturopathy was necessary to protect the public welfare, were alleged.

Appellee further alleged (¶ 10) "That the prohibition of the practice of Naturopathy as a separate branch of the healing art is a proper application of the police power of the State to a particular class practicing arts peculiar to themselves, there being no means of any practical regulation due to the close and confidential nature of the relationship between the Naturopath and patient with the consequent impossibility of supervising and confining such practice within lawful bounds."

Appellee admitted in two other portions of his answer (¶¶ 9, 14) that the Act prohibited the practice of naturopathy. He concluded with a prayer that the court sustain the validity of the enactment.

In its opinion (Appendix A, *infra*, pp. 1a-11a), the Supreme Court upheld the validity of the Act. As indicated above, p. 2, the present notice of appeal was timely filed, and the enforcement of the Act, already enjoined, was stayed pending disposition of the appeal by this Court.

HOW THE FEDERAL QUESTIONS WERE RAISED

A. Appellants alleged the federal unconstitutionality of the Act in ¶ 3 of their complaint, viz:

> "3. Plaintiffs allege that the act in question is in violation of their rights as citizens of the United States of America and of South Carolina as provided in the Fifth and Fourteenth Amendments of the United States

Constitution in that it deprives the plaintiffs of their property and property rights without due process of law, and denies them of the equal protection of the laws and is arbitrary and discriminatory in that it singles out naturopathy, one of a number of special practitioners in the art of healing and abolishes their profession only."

B. Appellee contended that the Act was constitutional, as follows:

(i) Answer, ¶ 6: "* * * the Defendant alleges that the provision of the said Act, the purpose of which is to protect the public's health and welfare, are within the police power of the State, are a valid exercise of said police power, and are neither arbitrary nor discriminatory."

(ii) Answer, ¶ 9: "That the mere fact that the Plaintiffs may suffer pecuniary injury because of the proper exercise of the police power of the State in forbidding the practice of Naturopathy in South Carolina, does not render the Act unconstitutional, because all private property is held and all callings are exercised in this State subject to the proper exercise of the police power of the State."

(iii) Answer, ¶ 10: Already quoted *supra*, p. 5.

(iv) Answer, ¶ 13: "That the practice of medicine is not a Federal privilege or immunity within the purview of the Fourteenth Amendment to the Constitution of the United States, and is peculiarly within the control of the State and not the United States."

C. The opinion of the Supreme Court of South Carolina (Appendix A, *infra*, pp. 1a-11a) considered the constitutional questions, saying (p. 3a), "We think it may be fairly stated that the questions involved are: * * * (B)[2] Is the Act violative of either the Federal or State Constitutions? (C) May the State, under the police power, so regulate?"

[2] Question "(A)" was a purely state constitutional issue.

he state Supreme Court then passed on those questions uarely, concluding (p. 11a), "It is our opinion that the actment in question is a valid exercise of the police power the State and that no unwarranted discrimination apars in the Act * * *"

THE QUESTIONS ARE SUBSTANTIAL

Appellants do not question in the slightest the broad olice power of a State to regulate the practice of the aling arts (e.g., *Dent* v. *West Virginia,* 129 U.S. 114; *llins* v. *Texas,* 223 U.S. 288), and if the South Carolina gislature had simply raised the educational qualifications deemed prerequisite to the practice of naturopathy—as, e point out below, p. 10, it had done twice before—apllants would have no constitutional cause of complaint .g., *Graves* v. *Minnesota,* 272 U.S. 425), regardless of e individual hardship such a change of qualifications ight involve. Cf. *Crane* v. *Johnson,* 242 U.S. 339, 342.

But this is not a case of regulation, it is one of flat rohibition. Section 2 of the Act in question (*infra,* p. 12a) ecifically and unequivocally says that "It shall be unlawl for any person whether heretofore licensed or not nder the laws of this or any other state to practice aturopathy in this State; * * *."

Naturopathy is defined by Section 56-901 of the Code Laws of South Carolina, 1952, *infra,* p. 14a, as follows:

> "'*Naturopathy*' is hereby defined to mean the use and practice of psychological, mechanical and material health sciences to aid in purifying, cleaning and normalizing human tissues for preservation or restoration of health according to the fundamental principles of anatomy, physiology and applied psychology, as may be required. Naturopathic practice employs, among other agencies, heat, light, water, electricity, psychology, diet, massage and other manipulative methods. These agencies are known as psychotherapy, suggestotherapy, hydrotherapy, electrotherapy, mechanother-

apy, biochemistry, external appliances, mechanical and electrical appliances, hygiene, first aid, sanitation, heliotherapy and dietetics. The use and practice of phytotherapy, minor surgery, obstetrics and gynecology, autotherapy and biologicals shall be a part of and included in the practice of naturopathy."

Appellee agrees that the Act forbids the further practice of naturopathy in South Carolina. Answer, ¶¶ 6, 9, 10, 14.

Nor can the proviso immediately following the prohibition be construed as simply raising the educational qualifications requisite to the practice of naturopathy. It does not say that only one with the qualifications of a doctor of medicine may practice naturopathy. It flatly forbids the practice of naturopathy by anyone, regardless of qualifications.

Neither does it provide that naturopaths now practicing their art may, if they further qualify as doctors of medicine, resume the practice of naturopathy. To the contrary, it states unequivocally that "any person now authorized to practice naturopathy in South Carolina who [1] is a graduate of an accredited college for pre-medical training and [2] who has, in addition thereto, graduated from a medical college * * *, [and 3] who has heretofore for a period in excess of five years engaged in the practice of medicine in the State of South Carolina under the supervision of a licensed medical doctor," shall be examined by the Board of Medical Examiners—not by the simultaneously abolished Board of Naturopathic Examiners, see Section 56-902 of the South Carolina Code, *infra*, p. 14a—, and, if he passes the examination, "shall be licensed to practice medicine in this State." The statute does not say that if the person now authorized to practice naturopathy complies with these requirements he may once more practice naturopathy.

Far from saving rights, the quoted "saving clause" is actually discriminatory. For, as Sections 56-1354 *et seq.*

of the 1952 Code show, a layman embarking on the practice of medicine could more easily qualify to practice medicine *per se* than the now outlawed naturopath. The medical student beginning practice need not show—as the naturopaths who have long been licensed now must—that he "has heretofore for a period in excess of five years engaged in the practice of medicine in the State of South Carolina under the supervision of a licensed medical doctor." Indeed, the novitiate who is a licentiate of the national board of medical examiners may be admitted to practice without further examination; Section 56-1363. The present Act is therefore in substance a bill of pains and penalties, directed at those now practicing naturopathy, and at no one else.[3] Similar discriminations have been held unreasonable and hence unconstitutional by other state courts. See *State* v. *Gravett*, 65 Oh. St. 289, 62 N.E. 325; *People* v. *Love*, 298 Ill. 304, 131 N.E. 809.

Thus we have here a statute directly aimed at a particular branch of medical science, a statute which prohibits the practice of naturopathy entirely, by anyone, regardless of the individual's qualifications or prior education. That much is frankly admitted by appellee in four separate paragraphs of his answer. ¶¶ 6, 9, 10, 14.

In thus singling out naturopathy as its sole target, the South Carolina Legislature was not dealing with a new or untested therapeutic system.

In 1920, thirty-six years ago, South Carolina first recognized "Osteopaths, homeopaths, chiropractors, naturopaths, magnetic healers and other practitioners of any branch of

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[3] As the challenged Act stands, the requirement for five years practice under supervision would bar all present naturopaths, except possibly one or two, even if, what with their advanced age and the present admitted shortage of medical colleges, they could secure admission to the medical course now required by the Act.

the healing art" as "Special Practitioners." See Section 14 of the Act of March 10, 1920; S. C. Laws of 1920, p. 1009.

In 1937, the South Carolina Legislature passed a comprehensive Naturopathy Act, setting up requirements for the practice of naturopathy, and creating a State Board of Naturopathic Examiners. Act of May 10, 1937; S. C. Laws of 1937, p. 441.

In 1941, South Carolina greatly increased the qualifications required of a practitioner of naturopathy (Act of April 18, 1941; S.C. Laws of 1941, p. 143). That Act required the completion of 4 years of high school and one year of premedical training, and that the practitioner be a graduate of a recognized school of naturopathy giving a course of four years of nine months each, totalling 4400 hours, and including a host of medical subjects in its curriculum (now as amended, 1952 Code, § 56-907, *infra*, p. 15a).

In 1949, the pre-medical requirement was raised to two years (Act of June 4, 1949; S. C. Laws of 1949, at p. 539; now § 56-906, *infra*, p. 15a), and the Board of Naturopathic Examiners was authorized to revoke licenses, a power which, as the case of *Jacoby* v. *S. C. Board of Naturopathic Examiners*, 219 S.C. 66, 64 S.E. 2d 138, demonstrates, it has not hesitated to exercise.

Naturopaths were duly restricted to the practice of their specialty. Section 56-913 (*infra*, pp. 16a-17a) expressly forbade them to practice materia medica or surgery. Section 56-1374 provided criminal penalties for any unlicensed person practicing medicine. And means were readily at hand to determine the exact boundaries beyond which naturopaths could not legally function. See *Dantzler* v. *Callison*, 227 S. C. 317, 88 S.E. 2d 64.

Moreover, comparison of the legislative requirements for the several branches of the healing arts shows that the qualifications prescribed for naturopaths were markedly

igher than those laid down for chiropractors, osteopaths, nd, in some instances, for doctors of medicine.[4]

Consequently, as the law stood at the time of the passage f the Act now challenged, a naturopathic physician was equired to meet qualifications that were rigid by any tandards, and, as has been indicated (*supra*, p. 10), was xpressly prohibited from trenching on the domain of the nedical doctors.

Nor had naturopathy previously been condemned by the Supreme Court of South Carolina. Thus, in a fairly recent

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[4] (a) *Premedical requirements.*

(i) *Chiropractors:* None. 1952 Code, § 56-354.

(ii) *Osteopaths:* High school diploma or the equivalent. § 56-1109.

(iii) *Doctors of Medicine:* As prescribed by the State Board of Medical Examiners. § 56-1357.

(iv) *Naturopaths:* Graduate of a high school and of a two year premedical course. § 56-906, *infra*, p. 15a.

(b) *Medical requirements.*

(i) *Chiropractors:* Graduate of four years training in a school or college of chiropractic accredited by the Board of Chiropractic Examiners. § 56-354.

(ii) *Osteopaths:* Graduate of a school of osteopathy giving a course totalling 144 weeks. § 56-1109. Examination to cover 14 named subjects and such others as the Board of Osteopathic Examiners may require. § 56-1110.

(iii) *Doctors of Medicine:* Such medical education as may be prescribed by the State Board of Medical Examiners. § 56-1357. Examination to cover 14 named subjects, and such others as the Board may deem necessary. § 56-1360.

(iv) *Naturopaths:* Graduate of a Class A school, college or university having a regular professional course in naturopathy of four years of nine months each, with a total of 4400 hours, including 27 named subjects. Of these, the following are not required by statute of doctors of medicine, although obviously relevant to the practice of traditional medicine: Etiology, Diagnosis, Comparative Medicine, Orthopedics, Symptomatology, Dietetics. § 56-907, *infra*, p. 15a.

case where an insurance company resisted a claim under a policy which by its terms became void if the insured was treated by one not a physician, contending that those terms were violated when the insured went to a naturopath, the Supreme Court of South Carolina held that a naturopath was a physician, and allowed recovery on the policy. *Williams* v. *Capital Life & Health Ins. Co.*, 209 S.C. 512, 41 S. E. 2d 208. The court said (209 S.C. at 518, 41 S.E. 2d at 210):

> "At the time the respondent's claim arose the practitioner in question was certainly a 'naturopathic physician' within the specific language of the applicable statute. He was practicing his profession within the indicated field, and in the absence of anything in the record to show the contrary, he must be deemed to have been duly licensed. He was then, a duly licensed and practicing naturopathic physician. He was therefore an eligible or qualified practitioner to sign the certificate required by appellant's policy unless the fact that he is a naturopathic physician, instead of being merely a 'physician,' disqualifies him.
>
> "Naturopathy is one of a number of fields in the art of healing which have been so far recognized by the General Assembly as accepted processes of preventative and curative medicine that stringent educational and licensing provisions have been imposed. Any one engaged in the practice of any of such branches of medicine, after having been duly licensed, stands for all purposes in the position of a physician in the orthodox fields of medicine, at least to the extent that he limits his activities to the recognized scope of his particular profession. An osteopath, a homeopath, a chiropractor, a magnetic healer and a naturopath, Code, Sec. 5162, are alike practitioners in the field of medicine, and it appears to us to be straining at a gnat to enter into a discussion of distinctions between a 'practitioner of medicine' and a 'physician'."

Consequently, in now outlawing naturopathy completely, by whomsoever practiced, the South Carolina legislature is making a determination against a particular school of medical thought and practice, without any allegation in

appellee's answer, much less a shred of evidence in this record, to indicate why or in what respect the practice of naturopathy is more deleterious to the public health or welfare than the practice of chiropratic or osteopathy, both of which, however unorthodox from the point of view of the medical doctor, are still perfectly legal in South Carolina now[5] just as naturopathy was for thirty-six years,—although, as has been seen, the requirements for the other special practitioners were less onerous than those imposed on naturopaths.

Since, as a matter of South Carolina law, "The right of a person to practice the profession for which he has prepared himself is property of the very highest character" (*Ezell* v. *Ritholz*, 188 S.C. 39, 48-49, 198 S.E. 419, 422; see also the opinion below, pp. 6a-7a, *infra*), since South Carolina still recognizes the rights of other special practitioners who are not required to be fully qualified doctors of medicine (note 4, *supra*), and since naturopaths may now be admitted as doctors of medicine only on terms more onerous than those required of others (pp. 8-9, *supra*), the basis of appellants' constitutional contentions appears in sharp outline.

What factual basis supports such a legislative assault on appellants' livelihood? How can the present "statutory sandbag"—the phrase is Judge Hough's[6]—be sustained? Specifically, what evidence justifies South Carolina's palpably arbitrary classification of what is good medicine and what is bad medicine? It is within the realm of judicial notice that the American Medical Association considers "the basic tenets of both chiropractic and naturopathy to be without scientific basis."[7] It is likewise a well-docu-

[5] Chiropractic, S. C. Code, 1952, §§ 56-351 to 56-361; osteopathy, S. C. Code, 1952, §§ 56-1101 to 56-1118.

[6] Hough, *Due Process of Law—To-Day*, 32 Harv. L. Rev. 218, 233.

[7] 153 J.A.M.A. 1552 (Dec. 26, 1953). Cf. *People* v. *Love*, 298 Ill. 304, 313, 131 N.E. 809, 812: "The prejudice existing against chiropractors by medical men and osteopaths is known to be intense and in many cases very unreasonable."

mented fact that the American Medical Association is a purposeful, well-organized, and highly effective pressure group,[8] which, as this Court's files amply disclose, has on occasion not hesitated to exalt its own dogmas above the law of the land. *American Medical Assn.* v. *United States*, 317 U.S. 519. Compare *United States* v. *Oregon Medical Soc.*, 343 U.S. 326.

We submit that it is just as improper and just as unreasonable to limit the practice of medicine to the particular therapeutic systems deemed sound and scientific by the American Medical Association as it would be to limit the practice of law to those lawyers who subscribe to the tenets of the American Bar Association.[9]

Here, unlike *Davis* v. *Beeler*, 185 Tenn. 638, 207 S.W. 2d 343, appeal dismissed, 333 U.S. 859, there is a flat prohibition against the practice of naturopathy and not simply an increase in the qualifications required.[10] Moreover, there was here no showing of abuses or irregularities in the prior practice of naturopathy, such as was definitely present in the Tennessee case,[11] nor was there any discriminatory

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[8] See Note, *The American Medical Association: Power, Purpose, and Politics in Organized Medicine*, 63 Yale L. J. 938. Note particularly pp. 963-967 in the present connection.

[9] It is a matter of history that, in 1916, no less than seven former presidents of the American Bar Association opposed the confirmation of the nomination of Mr. Louis D. Brandeis to be an Associate Justice of this Court. Mason, *Brandeis: A Free Man's Life*, pp. 489-490.

[10] "The methods employed by naturopaths may still be used by those formerly practicing naturopathy if they obtain the qualifications now possessed by medical doctors and osteopaths." *Davis* v. *Beeler*, 185 Tenn. at 653-654, 207 S.W. 2d at 350.

[11] "It appears that at the session of the General Assembly previous to the one enacting this statute, a committee was appointed to investigate the unlawful practice of the healing arts, and that the committee made a report to the General Assembly enacting the

feature there directed at naturopaths seeking to qualify as medical doctors, such as there is here (*supra*, pp. 8-9). These features we believe, sufficiently differentiate the present case from that one. Nor do we have here any complication arising out of "the afflatus of the Eighteenth Amendment" (*Danovitz* v. *United States*, 281 U.S. 389, 397) such as was inextricably involved in the close case of *Lambert* v. *Yellowley*, 272 U.S. 581.[12]

We are dealing here with a statute that exemplifies the frightening tyranny of the majority in the field of medicine,[13] so exercised that now no healer of the sick within the State, howsoever qualified, may practice naturopathy. No evidence is adduced even tending to show that this essentially drugless branch of the healing art is in any way harmful to the public health. Nor is there any sug-

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statute. The report revealed that licenses to practice naturopathy had been issued to wholly unqualified individuals; that they had been purchased; that they had been issued as a result of fraudulent co-operation; that a number of corporations had been chartered by naturopaths to issue certificates of compliance with the educational requirements of existing statutes; and that some of these chartered schools issued diplomas to persons who had attended the schools for a period of time not in excess of one week, but which diplomas certified that the holders thereof were qualified in a number of subjects dealing with the healing arts." *Davis* v. *Beeler*, 185 Tenn. at 641, 207 S.W. 2d at 344-345.

[12] The statement there, 272 U.S. at 596, that "there is no right to practice medicine which is not subordinate to the police power of the States," was dictum, inasmuch as the holding of the Court was that Dr. Lambert's right to prescribe spirituous liquor for his patients was subject, not to the state's police power, but to the Congressional power derived from the XVIII Amendment. But, in any event, that dictum can rise no higher than the authorities cited for it, all of which involved regulation and practitioners' qualifications, and none of which, unlike the South Carolina statute now under consideration, dealt with an absolute prohibition of a particular branch of the healing art.

[13] At present there are about 1300 M.D.'s in South Carolina as against only 45 or so naturopaths.

gestion that abuses have crept into its practice. All that is marshalled against naturopathy is that the American Medical Association considers its basic tenets "to be without scientific basis" (*supra*, note 7), so that it is now fair game for attack, just as homeopathy was in the not distant past (*supra*, note 8 at 966-967), and as chiropractic is now and doubtless will continue to be in the future.

This case, involving as it does a legislative fiat that exacts submission to medical orthodoxy, that requires conformity in an area where open-mindedness is peculiarly in the public interest, has overtones of thought control that are indeed disturbing. By forbidding altogether the practice of one branch of the healing arts, South Carolina has in effect prescribed a state system of healing, a step which, as the Supreme Court of North Carolina once observed, stands next to the ordaining of a state church. See *State* v. *McKnight*, 131 N.C. 717, 723-724, 42 S.E. 580, 582; cf. also *State* v. *Biggs*, 133 N.C. 729, 46 S.E. 401.

The statute here in question is far more closely akin to similar legislative prohibitions struck down by this Court—forbidding children to be instructed in a foreign language (*Meyer* v. *Nebraska*, 262 U.S. 390; *Bartels* v. *Iowa*, 262 U.S. 404) or to be taught in a private school (*Pierce* v. *Society of Sisters*, 268 U.S. 510); forbidding merchants to keep books of account in their mother tongue (*Yu Cong Eng* v. *Trinidad*, 271 U.S. 500)—than it is to any legislation affecting medical practice that has ever been brought to this Court. We believe, therefore, that this case presents questions so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

CONCLUSION

It is therefore respectfully submitted that the Court should note probable jurisdiction of this appeal, and order the cause set down for argument.

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OCTOBER, 1956.

APPENDIX

APPENDIX A

OPINION BELOW

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

DR. M. S. DANTZLER, individually and as President of the South Carolina Naturopathic Physicians Association, et al., *Plaintiffs*,

VS.

T. C. CALLISON, Attorney General of South Carolina, *Defendant*.

IN THE ORIGINAL JURISDICTION

Case No. 4092

Opinion No. 17200
Filed August 20, 1956

COMPLAINT DISMISSED

Price & Poag, of Greenville, for plaintiffs.

Attorney General T. C. Callison and Asst. Attorney General James S. Verner, both of Columbia, for defendant.

T. B. GRENEKER, A.A.J.: This action was brought in the original jurisdiction of this Court, and as the pleadings will be printed, we only state very briefly the allegations thereof.

The plaintiffs allege that the individual plaintiffs are all licensed naturopathic physicians and were admitted to practice in compliance with the law prior to June 1946, and that the last ten practitioners admitted in the State were admitted under the amended act of 1949. During the 1956

Session of the General Assembly of South Carolina, the following act was adopted:

> "Section 1. Sections 56-901 through 56-919, Code of Laws of South Carolina, 1952, are hereby repealed.
>
> "Section 2. It shall be unlawful for any person whether heretofore licensed or not under the laws of this or any other state to practice naturopathy in this State; *Provided*, however, that any person now authorized to practice naturopathy in South Carolina who is a graduate of an accredited college for pre-medical training and who has, in addition thereto, graduated from a medical college recognized at the time of his graduation by the state in which it was located, and who has heretofore for a period in excess of five years engaged in the practice of medicine in the State of South Carolina under the supervision of a licensed medical doctor by special request or by special permission of the State Board of Medical Examiners, or agents thereof, shall be examined by the State Board of Medical Examiners on the same basis as other applicants to the Board are examined, and upon the making of a passing grade on this examination, shall be licensed to practice medicine in this State."

Section 3 provides for the punishment of the violation of the Act. Section 4 provides that all Acts or parts of Acts inconsistent therewith were repealed.

The Plaintiffs seek a declaratory judgment as to their rights and contend that the Act is unconstitutional in that it violates the Fifth and Fourteenth Amendments of the Constitution of the United States by depriving them of their property and property rights without due process of law and denies them the equal protection of the law; is arbitrary and discriminatory in that it singles out naturopathy, one of the arts of healing, and abolishes its practice. They further allege that the Act is in violation of Article 1, Section 5; Article 1, Section 17; and Article 3, Section 17 of the Constitution of South Carolina in that it deprives them of their property and property rights without due process

of law; denies them equal protection; is arbitrary and discriminatory; and that the Act relates to more than one subject which is not expressed in the title. It is further contended that the Plaintiffs entered the practice of naturopathy as a means of a livelihood; they have invested much time and great sums of money; and that naturopathy has been recognized by the General Assembly of South Carolina since 1920; and it is finally contended that the Act is prohibitory and asks that it be declared null and void.

The answer admits that the individual Plaintiffs have been practicing naturopathy since their admission and admits the passage of the Act, however, it denies that the Act is in violation of either the State or Federal Constitutions. It is also admitted that by the Act the practice of naturopathy, as a separate cult, is prohibited; and that it makes unlawful certain acts by the Plaintiffs, otherwise lawful, but lawful only to those coming under the provisions of the law. Defendant contends that the purpose of the Act is to protect the public health and welfare and is a valid exercise of the police power of the State, and denies that it is either arbitrary or discriminatory.

We think it may be fairly stated that the questions involved are:

(A) Is the title of the act defective so as to render it unconstitutional in view of Section 17 of Article 3 of the South Carolina Constitution?

(B) Is the Act violative of either the Federal or State Constitutions?

(C) May the State, under the police power, so regulate?

The title of the Act in question is as follows:

"An Act To Repeal Sections 56-901 Through 56-919, Code of Laws of South Carolina, 1952, Relating To The Practice Of Naturopathy; To Make It Unlawful For Certain Persons To Practice Naturopathy In This

State; And To Provide Penalties For Violating The Provisions Of This Act."

Section 17, Article 3 of the South Carolina Constitution reads as follows:

> "Every Act or Resolution having the force of Law shall relate to but one subject, and that shall be expressed in the title."

The purpose of this section is to prevent deception of the public and to prevent insertion of matters not germane to the general subject. Furman v. Willimon, 106 S. C. 159, 90 S. E. 700; Miles Laboratories v. Seignious, 30 Fed. Supp. 549.

This section is to be construed with great liberality. Gasque v. Nates, 191 S. C. 271, 2 S. E. (2d) 36.

This requirement should not be enforced in any narrow or technical spirit. It was adopted to prevent certain abuses and it should be reasonably and liberally construed on the one hand so as to guard against these abuses, and on the other hand so as not to embarass or obstruct needed legislation. Alley v. Daniel, 153 S. C. 217, 150 S. E. 691.

There is no doubt in the mind of this Court as to the validity of the title of the Act, but even if there were some doubt, a statute should be upheld if possible, doubtful cases being resolved in its favor. Alley v. Daniel, supra.

The Plaintiffs certainly knew the purpose of the Act, for when the bill was before the General Assembly, according to their brief, they say: "We appeared before the House Judiciary Committee and the Senate Medical Committee and filed a printed brief along the lines followed herein."

Plaintiffs rely upon Nettles v. Wachovia Bank, 160 S. C. 104, 158 S. E. 214, however, we think this authority affords the Plaintiffs no comfort as a study of that decision will reveal the difference between that and the instant case.

The purpose of this provision is to prevent "log-rolling legislation"; to prevent surprise or fraud upon the legislature by means of provisions in bills of which the title gave no indication, and which may be, therefore, overlooked and unintentionally adopted; and to apprise the people of the subject of the legislation in order that they may have opportunity of being heard, if they so desire. McCollum v. Snipes, 213 S. C. 254, 49 S. E. (2d) 12, and many other authorities therein cited.

What subject, if we may ask, is embraced in the Act which is not referred to in the title or not germane to the purposes of the Act? The Plaintiffs direct our attention to none, and none does an examination thereof reveal. It is indeed the duty of this Court to sustain the constitutionality of a sacred act of the legislature unless the contrary most clearly appears from the language of the statute. This Court still adheres to the doctrine that it was not established by the people to assume the duties of legislation, and neither will it declare an act of the legislature unconstitutional unless the language of the Act itself plainly and unmistakably reveals its conflict with the Constitution.

The authorities seem to abundantly differ with plaintiffs' contention, and we so hold.

The plaintiffs contend that the main question for consideration is: "Does the Act deprive the plaintiffs of their property rights without due process of law, and does the Act deny to them equal protection of the law?"

"Naturopathy is one of a number of fields in the art of healing" . . . . and has been recognized "as a process of preventive and curative medicine", and every person so practicing, after being duly licensed, "stands for all purposes in the position of a physician in the orthodox fields of medicine. . . ." Williams v. Capital Life and Health Insurance Company, 209 S. C. 512, 41 S. E. (2d) 208.

From the record, as well as from an independent examination, we conclude that Naturopathy is of comparatively

recent recognition, so far as South Carolina is concerned. The area of its field of practice seems to have increased much more rapidly than the required educational qualifications of those who profess to practice. Indeed, it is rather difficult for the ordinary layman to understand how one may be permitted to practice "the use and practice of phytotherapy, minor surgery, obstetrics, gynecology, autotherapy and biologicals", or to "purifying, cleansing and normalizing human tissues for preservation or restoration of health, according to the fundamental principles of anatomy and physiology", without first satisfactorily giving evidence of his unquestioned training and qualifications. Who is to set the standard for such persons? Shall it be the afflicted in mind and body, who plead day and night for relief, or shall it be those who are suddenly stricken in and about their hearts, lungs, stomachs or blood stream, when even the most perfect training, experience and care may not be enough? Or should it be the State? The State may not say to its citizens what they must do or to whom they must go in time of mental and physical distress, but we think the State has the right to say and direct what the qualifications shall be of those persons to whom its citizens turn in their hour of need.

Regardless of anything which may appear to a layman's mind as to what should be the requirements of one who is to diagnose and find out what is the cause and treatment of his illness, it is not a judicial question. It is one of legislative authority. From the record, we find that before the Bill became an Act, the General Assembly provided for hearings before two of its standing committees, and we must assume that the Act is based upon bona fide, scientific grounds. State v. Barnes, 119 S. C. 213, 112 S. E. 62.

There is no reasonable doubt that the rights of those who have been duly licensed to practice medicine or other professions are property rights of value which are entitled to protection. Ezell v. Ritholz, et al., 188 S. C. 39, 198 S. E. 419; and that the right of a person to practice his profes-

sion for which he has prepared himself is property of the very highest quality. Cavassa v. Off, 206 Cal. 307, 274 Pac. 523. However, it may be observed that no person has a natural or absolute right to practice medicine, surgery, naturopathy or any of the various healing arts. It is a right granted upon condition. Examiners v. Fowler, 50 La. 1358, 24 So. 809; Board v. Fife, 162 La. 681, 111 So. 58, 54 A.L.R. 594.

A state may not prohibit the practice of medicine or surgery, yet it is very generally held that a state, under its police power, may regulate, within reasonable bounds, for the protection of the public health the practice of either by defining the qualifications which one must possess before being permitted to practice the same. Hawker v. New York, 170 U. S. 189, 42 L. Ed. 623; Dent v. West Virginia, 129 U. S. 114, 32 L. Ed. 623; and of course, it naturally follows that a legislature in defining the required qualifications cannot prescribe, as a condition to the right to practice, knowledge which bears no relation to the profession in question. However, this in no way means that the legislature, in enforcing its required qualifications which one, in its judgment, should possess to practice medicine, must make requirements for every school of medicine or of the healing arts which may exist, by requiring of those belonging to each particular school a knowledge only of those subjects which the theory of healing, advocated by each school, requires, as was said by the Supreme Court of Louisiana in Medical Examiners v. Fowler, supra. In 274 U. S. 720, 71 L. Ed. 1324, which was a memorandum decision affirming Fife v. State Board of Louisiana, supra, the court said, "We know of no constitutional right given to particular persons, who entertain peculiar theories, designating themselves a special school under a selected name, to be recognized and dealt with as such."

Section 56-901, now repealed, sets forth the field of practice for Naturopaths. Section 56-1354 defines the Practice of Medicine. There is nothing in the existing statutes

which will prevent the practice of any subject covered in Section 56-901, now repealed, by any person who has been or may be admitted to practice in conformity with existing legal provisions. By the adoption of the Act complained of, the legislature in no way cut down the field of practice but it did raise the standards of those who would operate in such fields. It was not the profession but it was those who practice the profession that the General Assembly was dealing with. This Act should be treated and construed as imposing additional qualifications upon persons already in the profession. It is an effort on the part of the legislature to regulate one phase of the healing arts and should be construed in pari materia with other statutes relating to the subject. It is not for us to reason why or what prompted the legislature to adopt the statute. It was not without the benefit of the actions of its committees which initially considered the matter. As was said in Barsky v. Board of Regents of New York, 347 U. S. 442, 98 L. Ed. 829, "It is equally clear that a State's legitimate concern for maintaining high standards of professional conduct extends beyond initial licensing. Without continuing supervision, initial examinations afford little protection."

In Williamson, Attorney General of Oklahoma v. Lee, 348 U. S. 483, 99 L. Ed. 563, there was an attempt to strike down a statute which prohibited opticians from fitting or duplicating eye glasses without a prescription. The contention was made that the Act violated the due process clause of the Constitution. The Supreme Court of the nation denied this contention, holding that in matters of public health, the power of the legislature is exceedingly broad and it was not for the courts but for the legislature to determine the need for such regulation as a protection of the public.

We do not know what was the legislative mind. For good and sufficient reasons, it may have concluded that "a little learning is a dangerous thing" and that those who would undertake to treat or manipulate the human body must "drink deep or touch not". We of course must assume

that it knew of the decisions of this Court involving Naturopathy in Dantzler v. Callison, 88 S. E. (2d) 64, 227 S. C. 317; Jacoby v. State Board, 219 S. C. 66, 64 S. E. (2d) 138; and Williams v. Capital Life, supra. However, the right to practice medicine is a qualified one and is held in subordination to the duty of the State under the police power to protect the public health. Lawrence v. Board, 239 Mass. 424, 132 N. E. 174. The police power can not be stipulated or bartered away. Gray v. Conn., 159 U. S. 74, 40 L. Ed. 80.

No person can acquire a vested right to continue, when once licensed, in a business, trade or profession which is subject to legislative control and regulation under the police power, as regulations prescribed for such may be changed or modified by the legislature, in the public interest, without subjecting the action to the charge of interfering with contract or vested rights. State v. Hovorka, 100 Minn. 249, 110 N. W. 871, 8 L. R. A. (N. S.) 1273.

The granting of a license to practice certain professions is the method taken by the State, in the exercise of its police power, to regulate and restrict the activity of the licensee. He takes the same, subject to the right of the State, at any time, for the public good to make further restrictions and regulations. It is a matter of common knowledge that derivatives of opium or similar drugs could be purchased in former years at even a country store. The State has now prohibited this and a druggist may not sell morphine or drugs of that nature without a prescription from a duly licensed authority. If the restrictions are reasonable, they would be upheld even though they actually prohibit some people from further engaging in such occupations or professions under a license previously granted. See note 8 L. R. A. (N.S.) 1273.

It is universally held that it is competent for the legislature to prescribe qualifications for those who are to practice medicine and thus to assure that they shall possess the requisite character and learning, Dent v. W. Va., 129 U. S.

114, 32 L. Ed. 623, and the State may change the qualifications from time to time, making them more rigid. Dent v. W. Va., supra. It lies within the police power to require educational qualification of those already engaged in the practice of any profession. Hawker v. New York, 170 U. S. 189, 42 L. Ed. 1002.

In Commonwealth v. Zimmerman, 221 Mass. 184, 108 N. E. 893, and in State v. Smith, 233 Mo. 242, 135 S. W. 465, we find that statutes somewhat similar to the instant statute were under attack along the same lines which the plaintiffs herein argue. It was there held: "The protection of the public from those who undertake to treat or manipulate the human body without that degree of education, training and skill which the Legislature has prescribed as necessary to the general public safety is within the police power of the state. * * * The protection of the public health is an object of such vital importance to the welfare of the state that any rational means to that end must be upheld."

Indeed we may assume that the Legislature, in its wisdom, may have concluded that "the limited practitioner is likely to do a great deal of harm, not only because he is not thoroughly educated as a physician, but as he is only licensed to use a certain system of treatment, he is apt to use it in cases to which it is not adapted."

In Williams v. Capital Life & Health Ins. Co., supra, Mr. Chief Justice Baker, now retired, speaking for this Court, said: "While this is not in any sense controlling, we may advert to the fact that it is a matter of common knowledge that the people who purchase sick benefit policies of the industrial type constitute a large proportion of the patrons of practitioners of healing or medicine as naturopathy, and that it is generally believed by such people that they are dealing with licensed practitioners of medicine." May we ask, after all, why should not persons who hold themselves out to be doctors, regardless of what they may otherwise

profess, be required to have the training of a medical doctor?

In Davis v. Beeler, a Tennessee case, 207 S. W. (2d) 343, in which certiorari was denied by the U. S. Supreme Court, 92 L. Ed. 1138, a statute strikingly similar to that here was contested on practically the same grounds as in the instant action. There the General Assembly adopted a statute which first repealed the act authorizing the licensing of naturopaths, and second, prohibited the practice of naturopathy. It appears that there were some two hundred licensed naturopaths in Tennessee at the time. Practically every question raised in the action before us was presented to the Tennessee Court which held adversely to the contentions of the plaintiffs there and here, the Court saying: "Evidently, the Legislature thought there was too much border-lining in the practice of Naturopathy and determined to stamp out the evil that was not in the science but in the practicing of it, to the definite injury of credulous sufferers."

Where the primary duty and responsibility for determining a question rests with the Legislature, this Court will not substitute its judgment for that of the legislative authority.

It is our opinion that the enactment in question is a valid exercise of the police power of the State and that no unwarranted discrimination appears in the Act, and

IT IS SO ORDERED.

Let the complaint and answer be published herewith.*

STUKES, C. J., OXNER, LEGGE and MOSS, J.J., concur.

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* [Omitted in printing; included in certified record.]

APPENDIX B

STATUTES INVOLVED

1. The challenged Act

AN ACT TO REPEAL SECTIONS 56-901 THROUGH 56-919, CODE OF LAWS OF SOUTH CAROLINA, 1952, RELATING TO THE PRACTICE OF NATUROPATHY; TO MAKE IT UNLAWFUL FOR CERTAIN PERSONS TO PRACTICE NATUROPATHY IN THIS STATE; AND TO PROVIDE PENALTIES FOR VIOLATING THE PROVISIONS OF THIS ACT.

Be it enacted by the General Assembly of the State of South Carolina.

SECTION 1. Sections 56-901 through 56-919, Code of Laws of South Carolina, 1952, are hereby repealed.

SECTION 2. It shall be unlawful for any person whether heretofore licensed or not under the laws of this or any other state to practice naturopathy in this State; *Provided*, however, that any person now authorized to practice naturopathy in South Carolina who is a graduate of an accredited college for pre-medical training and who has, in addition thereto, graduated from a medical college recognized at the time of his graduation by the state in which it was located, and who has heretofore for a period in excess of five years engaged in the practice of medicine in the State of South Carolina under the supervision of a licensed medical doctor by special request or by special permission of the State Board of Medical Examiners, or agents thereof, shall be examined by the State Board of Medical Examiners on the same basis as other applicants to the Board are examined, and upon the making of a passing grade on this examination, shall be licensed to practice medicine in this State.

SECTION 3. Any person violating the provisions of Section 2 of this act shall, upon conviction, be guilty of a misdemeanor and be fined not exceeding five hundred dollars

or be imprisoned for a period of not exceeding one year or both in the discretion of the court.

SECTION 4. All acts or parts inconsistent herewith are hereby repealed.

SECTION 5. This act shall take effect upon its approval by the Governor.

In the Senate House the 23rd day of February.

In the Year of Our Lord One Thousand Nine Hundred and Fifty-six.

ERNEST F. HOLLINGS,
President of the Senate.

SOLOMON BLATT,
Speaker of the House of Representatives.

Approved the 27th day of February, 1956.

GEORGE BELL TIMMERMAN, JR.,
Governor.

2. Provisions repealed by the challenged Act.

CODE OF LAWS OF SOUTH CAROLINA, 1952

[Annotations omitted]

CHAPTER 16

NATUROPATHY

Sec.		Sec.	
56-901.	Naturopathy defined.	56-911.	Licensees register in clerk's office.
56-902.	Board of Examiners.	56-912.	Authority and duties of naturopaths.
56-903.	Organization; rules and regulations; meetings.	56-913.	Naturopaths not to practice medicine, osteopathy, etc.
56-904.	General power with respect to naturopathy.	56-914.	Grounds for suspension or revocation of license.
56-905.	Application and fee.	56-915.	Charges against licensee and notice thereof.
56-906.	Qualifications of applicants.	56-916.	Hearing and finding of Board.
56-907.	Recognized school, college or university of naturopathy defined.	56-917.	Appeal.
56-908.	Subjects and type of examinations.	56-918.	Pay certain funds to public school fund.
56-909.	Reexamination after failure.	56-919.	Penalties.
56-910.	Licensing of nonresident naturopaths.		

§ 56-901. Naturopathy defined.

"Naturopathy" is hereby defined to mean the use and practice of psychological, mechanical and material health sciences to aid in purifying, cleaning and normalizing human tissues for preservation or restoration of health according to the fundamental principles of anatomy, physiology and applied psychology, as may be required. Naturopathic practice employs, among other agencies, heat, light, water, electricity, pyschology, diet, massage and other manipulative methods. These agencies are known as psychotherapy, suggestotherapy, hydrotherapy, electrotherapy, mechanotherapy, biochemistry, external appliances, mechanical and electrical appliances, hygiene, first aid, sanitation, heliotherapy and dietetics. The use and practice of phytotherapy, minor surgery, obstetrics and gynecology, autotherapy and biologicals shall be a part of and included in the practice of naturopathy.

§ 56-902. Board of Examiners.

There is hereby created a board of naturopathic examiners to be known as the South Carolina Board of Naturopathic Examiners. Whenever the terms of office of the members of the Board are about to expire the South Carolina Naturopathic Association shall recommend to the Governor, who shall appoint, four members of the Board, who shall be members of the South Carolina Naturopathic Association and whose term of office shall be for a period of four years.

§ 56-903. Organization; rules and regulations; meetings.

The Board shall meet within ten days after its appointment every four years and organize by electing a president, secretary and treasurer and adopting reasonable rules and regulations for the transaction of business. It shall meet in June and November of each year.

§ 56-904. General power with respect to naturopathy.

The Board may transact any business or legal matters pertaining to the practice of naturopathy in this State.

§ 56-905. Application and fee.

All applicants for examination and licensing must file with the secretary of the Board at least fifteen days prior to its regular meeting time proper credentials and a fee of twenty-five dollars.

§ 56-906. Qualifications of applicants.

Each applicant for examination and licensing to practice naturopathy in this State must be a graduate of a regular four year high school course and a two years premedical course and must have completed and hold a diploma from an accredited school, college or university of naturopathy conferring the degree of doctor of naturopathy recognized by the South Carolina Board of Naturopathic Examiners.

§ 56-907. Recognized school, college or university of naturopathy defined.

Any Class A school, college or university legally chartered and having a regular professional course in naturopathy and its allied branches of four years of nine months each, making a total of four thousand four hundred hours, and including in its curriculum bacteriology, anatomy, diagnosis, comparative medicine, physiology, etiology, hydrotherapy, histology, pathology, phytotherapy, biology, toxicology, electrotherapy, chemistry, hygiene and sanitation, massotherapy, analysis, biochemistry, orthopedics, symtomatology, physiotherapy, practice of naturopathy, autotherapy, ethics and jurisprudence, dietetics, gynecology and obstetrics shall be recognized by the South Carolina Board of Naturopathic Examiners and shall be a recognized school, college or university of naturopathy.

§ 56-908. Subjects and type of examinations.

The Board may name the branches of naturopathy and its allied sciences in which the applicant for licensing shall be examined and shall hold written or oral examinations or both, in the discretion of the Board.

§ 56-909. Reexamination after failure.

In case an applicant fails to pass the examination he shall be entitled to a second examination at the next regular meeting of the Board.

§ 56-910. Licensing of nonresident naturopaths.

Any person of good moral character licensed by a naturopathic board of any other state whose requirements are commensurate with the requirements of this State may in the discretion of the Board and upon the payment of fifty dollars be granted a license to practice in this State without examination.

§ 56-911. Licensees register in clerk's office.

Every licensed naturopathic physician shall be required, after receiving a certificate of qualification or license from the Board, to register in the county in which he resides with the clerk of court's office and pay a fee of fifty cents.

§ 56-912. Authority and duties of naturopaths.

All naturopathic physicians who are in active practice and licensed in this State may sign birth, death and health certificates, shall be required to report all infectious and contagious diseases to the State Board of Health and shall be accorded the use of the State biological and chemical laboratories.

§ 56-913. Naturopaths not to practice medicine, osteopathy, etc.

Nothing in this chapter shall be held or construed to authorize any naturopathic physician licensed hereunder to

practice materia medica or surgery, nor shall the provisions of this chapter in any manner apply to or affect the practices of osteopathy, chiropractic, Christian Science or any other treatment authorized or provided for by law for the cure and prevention of diseases and ailments.

§ 56-914. Grounds for suspension or revocation of license.

The Board may suspend or revoke, by a majority vote of its total membership, any license which may have been given under the provisions of this chapter to any practitioner to practice naturopathy in this State for any one or more of the following causes shown at a hearing before it, to wit:

(1) That any diploma, license, certificate or other credential illegally or fraudulently obtained by the applicant was presented to or filed with the Board and considered by it in granting the license;

(2) That a license has been applied for and issued under an assumed name for the purpose of shielding dishonesty or a criminal record;

(3) Conviction of any criminal operation or habitual drunkenness or adjudication of insanity;

(4) Immoral or dishonorable conduct which would reflect upon the licensee's professional competency;

(5) Addiction to any harmful drug habit;

(6) Unprofessional conduct bringing discredit upon the profession; and

(7) Conviction of a felony or misdemeanor involving moral turpitude or professional dishonor in which case the record of the conviction, or a certified copy thereof, certified by the clerk of court and by the judge in whose court the conviction is had shall be conclusive evidence thereof.

§ 56-915. Charges against licensee and notice thereof.

Whenever the Board shall have cause to believe that any license issued by it should be revoked because of the ex-

istence of some ground for revocation as set forth in § 56-914, it shall file or cause to be file with its secretary written charges against the accused, specifically setting forth the offense, act or conduct complained of. A copy of such charges shall be forthwith delivered to the accused practitioner in person or by registered mail or left with some person of sound discretion either at his place of business or place of last known residence, either of which shall constitute sufficient notice to justify proceeding with a hearing of the charge. In addition to the delivery of a copy of the charges, the Board shall, at the same time, advise the accused of the hour, day and place of a hearing of the charges and warn him to be present, if he so desires, and to defend the action.

§ 56-916. Hearing and finding of Board.

The accused practitioner shall be permitted to be present in person and by attorney at the hearing and at the taking of all testimony relative to the charges. Any member of the Board may administer oaths to all persons testifying at any such hearing. The accused shall be allowed at least ten days from the date of such notice to him of the charges before the hearing shall be held. The Board shall receive reasonable evidence, whether for or against the accused, and the Board shall not be bound by the strict rules of evidence as required in a court. The findings of facts of the Board shall be conclusive. The Board shall reach its findings and set forth its action thereon and a certified copy of such findings and of the action of the Board shall be served upon the accused practitioner.

§ 56-917. Appeal.

The practitioner, if he is dissatisfied, may apply to the court of common pleas of the county in which he resides or practices for a writ of certiorari and the questions to be determined by the court on such writ of certiorari shall be as provided by law and the decisions of the Supreme Court of this State.

§ 56-918. Pay certain funds to public school fund.

If at the close of any fiscal year there remains in the hands of the Board more than five hundred dollars over and above all indebtedness, the amount so held shall be turned over to the public school fund.

§ 56-919. Penalties.

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and punishable in the discretion of the court.

APPENDIX C

Certificate Re Judgment

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

DR. M. S. DANTZLER, individually and as President of the South Carolina Naturopathic Physicians Association, et al., *Plaintiffs,*

VS.

T. C. CALLISON, Attorney General of South Carolina, *Defendant.*

IN THE ORIGINAL JURISDICTION

Case No. 4092

Opinion No. 17200
Filed August 20, 1956

CERTIFICATE

IT IS HEREBY CERTIFIED that the opinion in the above entitled case, directing that the plaintiffs' complaint be dis-

missed, constitutes the final judgment of the Supreme Court of the State of South Carolina. Where, as here, a proceeding is permitted to be brought within the original jurisdiction of the Supreme Court, there is no entry of judgment additional to what is set forth in the Court's opinion.

Dated this 27th day of September, 1956.

/s/ J. B. WESTBROOK
Clerk of the Supreme Court
of the State of
South Carolina

[SEAL]

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Supreme Court of the United States

OCTOBER TERM, 1956

No. 511

DR. M. S. DANTZLER, INDIVIDUALLY AND AS PRESIDENT OF THE SOUTH CAROLINA NATUROPATHIC PHYSICIANS ASSOCIATION, ET AL., APPELLANTS,

versus

T. C. CALLISON, ATTORNEY GENERAL OF SOUTH CAROLINA, APPELLEE

MOTION TO DISMISS APPEAL

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versus

T. C. CALLISON, ATTORNEY GENERAL OF SOUTH CAROLINA, APPELLEE

MOTION TO DISMISS APPEAL

MOTION TO DISMISS

Pursuant to Rule 16 of the Rules of this Court, the Appellee moves that the Court dismiss the appeal in this matter on the ground that the same does not present a substantial Federal question.

STATEMENT

By this proceeding, the Appellant, individually and as President of the South Carolina Naturopathic Association, seeks a Declaratory Judgment as to the validity of and injunction against the enforcement of an Act of the General Assembly of South Carolina, approved February 27, 1956,

entitled "AN ACT TO REPEAL SECTIONS 56-901 through 56-919, CODE OF LAWS OF SOUTH CAROLINA, 1952, RELATING TO THE PRACTICE OF NATUROPATHY; TO MAKE IT UNLAWFUL FOR CERTAIN PERSONS TO PRACTICE NATUROPATHY IN THIS STATE; AND TO PROVIDE PENALTIES FOR VIOLATING THE PROVISIONS OF THIS ACT."

The statement as to the prior proceedings contained in the portion designated "Jurisdiction" in the Appellants' Statement as to jurisdiction before this Court, correctly states the proceedings thus far in this matter. Appellee contends that there is no substantial Federal question to warrant review of this decision by this Court and that, therefore, the appeal herein should be dismissed.

QUESTION PRESENTED

Does a State, under its police power, have the authority to regulate the practice of the various healing arts, including that of Naturopathy?

ARGUMENT

The Appellants, by this proceeding, question the right of the State to regulate the practice of various healing arts, including that of Naturopathy, by virtue of an Act of the General Assembly of South Carolina, approved February 27, 1956 (Appendix B, page 122, Statement as to Jurisdiction.)

The Appellants concede that they "do not question in the slightest the broad police power of a state to regulate the practice of the healing arts (*e. g. Dent v. W. Virginia,* 129 U. S. 114; *Collins v. Texas,* 233 U. S. 288)" Page 7, Appellants' statement as to Jurisdiction.

The statute here in question is quite similar in nature to those of Tennessee, Maryland, and Oklahoma which have all been sustained by their respective courts (*Davis v.*

Beeler, 185 Tenn. 638, 207 S. W. (2d) 343, Appeal Dismissed, 333 U. S. 859; *Aitchison v. State,* 204 Md. 538, 105 A. (2d) 495, Certiorari Denied, 348 U. S. 880, 75 S. Ct. 116, 99 L. Ed. 692; *Taylor v. State of Oklahoma ex rel. Rutherford,* 291 P. (2d) 1033, Appeal Dismissed October 8, 1956, 25 U. S. Law Week, 3102.

The Maryland statute was once again considered before a statutory three-judge district court in a decision handed down on April 19, 1956. *Hitchcock v. Collenberg,* 140 F. Supp. 894.

In the *Hitchcock case, supra,* District Judge Thomsen, speaking for the Court, said, page 899:

> "Requirements similar to the Maryland requirements have been repeatedly approved, for the reasons stated in the leading case of *Dent v. State of West Virginia,* 129 U. S. 114, at page 122, 9 S. Ct. 231, at page 233, 32 L. Ed. 623:
>
> 'Few professions require more careful preparation by one who seeks to enter it than that of medicine. It has to deal with all those subtle and mysterious influences upon which health and life depend, and requires not only a knowledge of the properties of vegetable and mineral substances, but of the human body in all its complicated parts, and their relation to each other, as well as their influence upon the mind. The physician must be able to detect readily the presence of disease, and prescribe appropriate remedies for its removal. Every one may have occasion to consult him, but comparatively few can judge of the qualifications of learning and skill which he possesses. Reliance must be placed upon the assurance given by his license, issued by an authority competent to judge in that respect, that he possesses the requisite qualifications. Due consideration, therefore, for the protection of society may well induce the state to exclude from practice those who have not such a license, or who are found upon examination not to be fully qualified.' "

The Court then went on to say, page 900:

"They also claim that the Maryland law discriminates against naturopaths in that it contains special provisions for the licensing of osteopaths, physical therapists, chiropractors, optometrists and chiropodists, and does not contain similar provisions for naturopaths.

"These and similar contentions have been before the courts on many occasions. In *Watson v. State of Maryland,* 218 U. S. 173, at page 176, 30 S. Ct. 644, at page 646, 54 L. Ed. 987, involving the very statute at issue here, the Supreme Court said:

'It is too well settled to require discussion at this day that the police power of the states extends to the regulation of certain trades and callings, particularly those which closely concern the public health. There is perhaps no profession more properly open to such regulation than that which embraces the practitioners of medicine. Dealing, as its followers do, with the lives and health of the people, and requiring for its successful practice general education and technical skill, as well as good character, it is obviously one of those vocations where the power of the state may be exerted to see that only properly qualified persons shall undertake its responsible and difficult duties.' "

In the case of *Taylor v. State ex rel. Rutherford, supra,* the Supreme Court of Oklahoma had this to say:

"The practice of any branch of the healing arts certainly affects the health and well-being of the people of Oklahoma and so long as the law regulating such matters is reasonable and non-discriminatory we think it is not unconstitutional and that a court of equity may properly enjoin such practice where there has been a failure to obtain a license authorized by the State Board of Medical Examiners as provided in the statutes above entitled."

Let us review historically the question of regulating the practicing of the healing arts.

Under the old English common law, anyone could set nself up as a practitioner of the healing arts. In fact, ıny of the first physicians and surgeons were barbers. ɔdern times have witnessed the universal passage of stat-es requiring healers to secure licenses, issued only after eeting certain rigid qualifications of training and char-ter. See 41 American Jurisprudence, Page 162. Certainly, far back as 1881, South Carolina, by what is now Section -1355, Code of Laws of South Carolina, 1952, started re-ricting the practice of medicine and surgery. Later, as rtain cults, fads and schools arose, exceptions were made allowing limited practice by chiropractors, optometrists, teopaths, naturopaths and allowing recognition of other lectic schools.

The Naturopaths are of comparatively recent origin, rtainly in the State of South Carolina. As originally set ɔ, they practice nature's arts such as sun cures, water ıres, heat cures and other drugless methods. They were ɔt satisfied, however, and from time to time, enlarged their eld of practice by using methods not allowed to them and y having statutes passed allowing them to enter into the eld generally open only to regular medical doctors and ırgeons. By amendments to the original Act in South Car-lina, they were allowed to practice gynecology, obstetrics nd minor surgery. They also were allowed to practice hytotherapy, which is the use of herbs, and they claim, nerefore, that since they were allowed to use herbs and lants and since the poppy is a plant from which opium ɔmes, they were allowed the use of narcotic drugs. This as denied to them, however, in the case of *Perry v. Lar-on,* 104 Fed. (2d) 728.

Since the Legislature of South Carolina prohibited the ractice of medicine by unqualified persons, as is shown by ection 56-1355 of the Code, persons would have had to

qualify to practice *materia medica* by examination of the Board of Medical Examiners in the absence of Sections 56-901 through 56-919 of the 1952 Code, most of these sections coming into the law in 1937. The Act under attack repeals those sections but still leaves open the requirements as to the practice of medicine generally. This new Act under attack here allows those who have had medical training to take the examinations provided for regular physicians and surgeons and to engage in the general practice of medicine, if they are qualified. It also leaves open the way for all the rest of the Naturopaths to qualify themselves to take the examination and practice medicine. In other words, all that the Legislature has done is to raise the qualifications for these men to practice naturopathy, requiring them to properly qualify for such practice. As seen hereafter, this does not deprive them of their property without due process of law, because the State has the unquestioned right, under the police power, to control both person and property in the interest of the public health. This right of the State is very broad.

In the case of *Williamson, Attorney General, v. Lee Optical Co. of Oklahoma*, 348, U. S. 483, 99 L. Ed. 563, it was held that the State of Oklahoma could properly pass a statute forbidding opticians from fitting or duplicating lenses of eye glasses without a prescription. This case goes into every question raised by the appellants here. It holds that in matters of the public health, the powers of the State Legislature are exceedingly broad, that it is not for the courts but for the Legislature to determine the need of police regulation of such activities and that the courts cannot strike down such statutes merely because they think they are unwise, improvident or out of harmony with a particular school of thought. This Court held that such a statute does not violate the due process clause of the Four-

teenth Amendment, does not unlawfully deprive the Plaintiffs of their property nor deny equal protection to them because the Legislature covered only one particular phase of one field for application of the remedy. The Supreme Court held that a reasonable classification had been made and that the Oklahoma Legislature did not act wrongfully in correcting the situation one step at a time.

In the very recent case of *Barsky v. Board of Regents of New York*, 347 U. S. 442, 98 L. Ed. 829, this Court had the following to say about the right of a state in connection with the public health and the practice of medicine within its boundaries:

> "It is elemental that a state has broad power to establish and enforce standards of conduct within its borders relative to the health of everyone there. It is a vital part of a state's police power. The state's discretion in that field extends naturally to the regulation of all professions concerned with health. • • • The practice of medicine in New York is lawfully prohibited by the State except upon the conditions it imposes. Such practice is a privilege granted by the State under its substantially plenary power to fix the terms of admission. • • • It is equally clear that a state's legitimate concern for maintaining high standards of professional conduct extends beyond initial licensing. Without continuing supervision, initial examinations afford little protection."

All property and property rights in this country are held subject to the paramount right of the exercise of the police power for the public benefit. Whenever any business, occupation, right, franchise or profession becomes obnoxious to public health, manners or morals, it may be regulated by the police power of the State, even to the point of suppression. The right to practice medicine is not a privilege of immunity of national citizenship. 61 A. L. R. 346. So far as that goes, neither is the right to practice law a

Federal privilege or immunity. See *In Re: Lockwood,* 154 U. S. 116, 38 L. Ed. 929. See also *Walton v. Atlanta,* 89 F. Supp. 309, 180 Fed. (2d) 143 (certiorari denied, 95 L. Ed. 604); *New Orleans Waterworks Co. v. St. Tammany Waterworks Co.,* 120 U. S. 64, 30 L. Ed. 563.

The fact that the Plaintiffs have been licensed as Naturopaths does not give to them a contract with the State or a fixed right to continue the practice of Naturopathy. See paragraph 45, Physicians and Surgeons, Vol. 41, American Jurisprudence:

> "A license issued to a physician gives to him a mere naked privilege of practicing medicine, or, rather, an immunity from punishment because of practice without a license. It does not give to him the right to practice free from police regulation by the State. The granting of a license is merely the means taken by the state, in the exercise of its police power, to regulate and restrict the practice for the public good, and confers upon the licensee no rights whatever in the way of a contract with the state. He takes the same subject to the right of the state, in the interest of the public welfare and health, to make further restrictions and regulations, even though they may actually prohibit further practice under a license previously granted."

This is from 41 Am. Jur., Page 150, which cites the following cases in support:

> *Reetz v. Michigan,* 188 U. S. 505, 47 L. Ed. 563;
> *State v. Webster,* 150 Ind. 607, 50 N. E. 750;
> *Hughes v. State Medical Examiners,* 162 Ga. 246, 134 S. E. 42, and others.

> "Since a license is not a contract and gives the holder no right to continue in the practice in the future unrestricted, it follows that any license may be revoked for good cause and that such revocations alone is not a taking of property without due process of law."

41 Am. Jur., page 172, citing among cases that of *Semler v. Oregon State Dental Examiners,* 294 U. S. 608, 79 L. Ed. 1086.

In both the *Barsky case* and the *Williamson case, supra,* the right to practice a form of medicine is recognized as a property right. South Carolina recognizes this right. See *Ezell v. Ritholz,* 188 S. C. 39, 198 S. E. 419. But private rights must give way to the public necessity and convenience under the maxim *"suprema lex salus populi."* When the Naturopaths began to practice in the State, they did so when they knew, or should have known, that the State, in the interest of the public welfare and health, could make further restrictions and regulations binding upon them even though they had proper licenses. The right to properly regulate a profession or business under the police power cannot, in a proper case, result in an unconstitutional taking of private property. See *Williamson v. Lee Optical Company of Oklahoma, supra,* and *Hughes v. State Board of Medical Examiners,* 162 Ga. 246, 134 S. E. 42.

It clearly appears under the foregoing cases that the State has the right to regulate the practice of all branches of the healing arts within the State. See also *Ezell v. Ritholz, supra.* The State certainly has the right to make a proper classification as to the requirements of training, experience and normal fitness of those concerned with the treatment of diseases of mind and body. In *State v. Barnes,* 119 S. C. 213, 112 S. E. 62, that chiropractors were engaged in the practice of medicine and that the State could control that field of its practice. In *Ezell v. Ritholz, supra,* the optometrists were involved, and they were declared subject to regulations.

It is not unlawful to classify business and to provide different rules for different classes. See *Henderson v. Mc-*

Master, 88 S. E. 648, 104 S. C. 268; *McCollough v. Brown,* 19 S. E. 458, 41 S. C. 220; *State v. Berlin,* 21 S. C. 292.

The requirement of equal protection is fully complied with, if the legislative classification bears a reasonable relation to the purposes sought to be effected and if the constituents of each class are treated alike under similar circumstances. See *Duke Power Co. v. Bell,* 152 S. E. 865, 156 S. C. 299; *Richards v. City of Columbia,* 88 S. E. (2d) 683, *Floyd v. Thornton,* 68 S. E. (2d) 334, 220 S. C. 414; *Ponder v. City of Greenville,* 12 S. E. (2d) 851, 196 S. C. 79.

Legislative classification or discriminations will stand the test of constitutionality unless entirely arbitrary and unreasonable. *State v. Hicklin,* 167 S. E. 674, 168 S. C. 440, Affirmed *Hicklin v. Coney,* 290 U. S. 169, 78 L. Ed. 247.

In the case of *Daniel v. Family Security Life Insurance Co. et al.,* 336 U. S. 220, 93 L. Ed. 632, it was held that a statute which prohibited undertakers from serving as agents for life insurance companies did not deny equal protection of the law because it operated only on a single company where the facts show that this was a reasonable classification. The following is taken from the case of *Williamson v. Lee Optical Co. of Oklahoma, supra*:

> "Secondly, the District Court held that it violated the Equal Protection Clause of the Fourteenth Amendment to subject opticians to this regulatory system and to exempt, as Sec. 3 of the Act does, all sellers of ready-to-wear glasses. The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring different remedies. *Tigner v. Texas,* 310 U. S. 141, 84 L. Ed. 1124, 60 S. Ct. 879, 130 A. L. R. 1321. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. *Semler v. Oregon State Dental Examiners,* 294 U. S. 608, 79 L. Ed. 1086, 55 S. Ct. 570. The legislature

may select one phase of one field and apply a remedy there, neglecting the others. *A. F. of L. v. American Sash & Door Co.*, 335 U. S. 538, 93 L. Ed. 222, 69 S. Ct. 258, 260, 6 A. L. R. (2d) 481 The prohibition of the Equal Protection Clause goes no further than the invidious discrimination"

In view of the above authority, we contend that the Legislature had full constitutional right to classify the Naturopaths, a very new cult or school of drugless healers, as a class to itself. This school of practitioners is of very recent origin and certainly has features different from any other of the many groups practicing limited physical or mental health practices. The mere reading of the Acts and statutes governing this branch of practitioners shows that they are a class unto themselves and that the Legislature did not violate any constitutional provisions in recognizing this classification.

CONCLUSION

From the foregoing, it is respectfully submitted that the appeal by the Appellants from the decision of the South Carolina Supreme Court does not present a substantial Federal question and that the same should, therefore, be dismissed.

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NOV 2 7 1956
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 511

DR. M. S. DANTZLER, individually and as President of the South Carolina Naturopathic Physicians Association, *et al., Appellants,*

v.

T. C. CALLISON, Attorney General of South Carolina.

Appeal from the Supreme Court of South Carolina

MEMORANDUM FOR APPELLANTS IN OPPOSITION TO THE MOTION TO DISMISS

Pursuant to Rule 16(3), appellants file this statement opposing the Motion to Affirm. That Motion was not served on counsel for appellants until November 26, 1956.

I. This Case Involves a Flat Prohibition of the Practice of Naturopathy by Anyone, Regardless of Qualifications or Medical Training.

Appellee's motion completely misses the point of the present appeal.

All of his cases involve statutes that established or altered the requirements for the practice of naturopathy; the familiar pattern involves a requirement that no one may practice naturopathy without a license from a board of medical examiners. Thus, in *Hitchcock* v. *Collenberg*, 140 F. Supp. 894 (D. Md.), relied on by appellee (Motion, pp. 3-4), the Maryland statute provided for two Boards of Medical Examiners, one appointed by the Medical and Chirurgical Faculty of Maryland, the other by the Maryland State Homeopathic Medical Society. That statute was upheld against an attack by a naturopath who desired to practice his branch of the healing art without a license from either board.

The South Carolina Act here involved, however, prohibits the practice of naturopathy entirely, as appellee has formally and solemnly admitted. Answer, ¶¶ 6, 9, 10, 14. Thus no doctor of medicine, duly licensed as such in South Carolina, even if further qualified by post-graduate training and years of experience, may practice naturopathy in that State. This, appellants assert, involves (Jur. St. 16) "a legislative fiat that exacts submission to medical orthodoxy", without a shred of evidence to support the basis of the prohibition.

It is said (Motion, p. 5) that "The Naturopaths are of comparatively recent origin, certainly in the State of South Carolina." Elsewhere naturopaths are referred to (Motion, p. 11), as "a very new cult or school of drugless healers."

We had supposed that their statutory recognition as special practitioners for thirty-six years in South Carolina (Section 14 of the Act of March 10, 1920; S. C. Laws of 1920, p. 1009), and their judicial recognition there as physicians and as practitioners in the field of medicine (*Williams* v. *Capital Life & Health Ins. Co.*, 209 S.C. 512, 41 S.E. 2d 208) would suffice to show that they did not lack standing merely because of novelty. And, though of

course not determinative here, we deem it significant that naturopaths were recognized by Congress as special practitioners in the self-employment tax provisions of the Internal Revenue Code. See Sec. 481(c)(5) of the Internal Revenue Code of 1939, as added by § 208(a) of the Act of August 28, 1950; Sec. 1402(c)(5) of the Internal Revenue Code of 1954.[1]

The short of the matter is that appellee puts forward no justification whatever for the absolute prohibition of one form of the healing art, which, as he has admitted (Answer, ¶¶ 6, 9, 10, 14), is effected by the statute now in issue.

II. The Discriminatory Feature of the Present Statute Is Completely Arbitrary and Utterly Unreasonable.

Of course a legislature has wide scope for classification. But no construction of the Equal Protection Clause of which we are aware can justify the discrimination involved here.

As we have shown (Jur. St. 8-9), the medical school graduate who seeks to practice medicine in South Carolina may, if he is a licentiate of the national board of medical examiners, be admitted to practice without further examination. Section 56-1363. Otherwise he must take an examination. Section 56-1360. But a naturopath now licensed may become a doctor of medicine only if, after graduating from medical school and passing the examination, he has in addition "heretofore for a period in excess of five years engaged in the practice of medicine in the State of South Carolina under the supervision of a licensed medical doc-

[1] By Sec. 201(f) of the Social Security Amendments of Aug. 1, 1956 (Public No. 800, 84th Cong.), the last cited provision was amended so that only doctors of medicine and Christian Science practitioners are exempt for the self-employment tax in the future; dentists, osteopaths, chiropractors, naturopaths, optometrists—as well as lawyers—become subject thereto beginning with the calendar year 1957.

tor." Section 2 of the Act of February 27, 1956; Jur. St. 12a.

No other individuals are made subject to this virtually exclusionary requirement, which prevents almost all naturopaths now practicing from ever becoming doctors of medicine. Thus what is involved here is not a classification, but a bill of pains and penalties that " 'operates as a legislative decree of perpetual exclusion' from a chosen vocation." *United States* v. *Lovett,* 328 U.S. 303, 316. For the terms of the statute are such that those now naturopaths who by Section 1 are prohibited from practising naturopathy are by Section 2 effectually prevented from ever becoming doctors of medicine in the future. No other individual is similarly excluded.

CONCLUSION

For the foregoing additional reasons, this case should be set down for argument.

Respectfully submitted.

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NOVEMBER, 1956.